



Water Law News for October 19, 2011
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WATER LAW NEWS OCTOBER 19, 2011

BNP, Inc.

Daily Environment

REPORT

HIGHLIGHTS

Agriculture

Class Certified in Hog Odor Nuisance Claim

Residents and property owners in Marshall County, Ky., qualify for class certification in a nuisance claim filed over odors from a hog farm, the U.S. District Court for the Western District of Kentucky held Oct. 12 (Powell v. Tosh, W.D. Ky.,...

Climate Change

Inspector General's Endangerment Finding Critique Not Relevant to Lawsuits, EPA Says

An inspector general report criticizing the Environmental Protection Agency's peer-review process for technical documents used to make a determination that greenhouse gas emissions should be regulated has no bearing on lawsuits...

Climate Change

Report Calls for Integration of Climate Risks, Policy

Global leaders need to integrate climate change risks into planning and policies to build climate resilience, according to a report released Oct. 18 by the World Resources Institute. The report, Decision Making in a Changing Climate, offers...

Climate Change

Senate Bill Would Restore Funds For NOAA Climate Service Blocked in House

Funding for a National Oceanic and Atmospheric Administration climate service, which had been barred under a House spending bill, has been restored in the Senate version on the floor this week, Senate Democratic aides said Oct. 18....

Drinking Water

FDA Rule Sets Allowable Limit for DEHP In Bottled Water Beginning in April 2012

The Food and Drug Administration will issue a final rule Oct. 19 setting an allowable level of 0.006 milligrams of di(2-ethylhexyl)phthalate (DEHP) per liter of bottled water, effective April 16, 2012....

Energy

Waxman Calls for Investigation Into Link Between Koch Industries, Keystone Pipeline

Rep. Henry Waxman (D-Calif.) on Oct. 18 called for an investigation into whether Koch Industries misled the House Energy and Commerce Committee when company officials said in May that the firm has no financial interest in the proposed Keystone...

Energy

Chu Hails Global Potential of Shale Gas, Says Environment Must Be Addressed

PARIS—Technological advances in extracting shale gas offer great potential for helping to meet global energy needs, but environmental concerns about the technology must be addressed, Energy Secretary Steven Chu said Oct. 18....

Oil Spills

Congress Gathers Input on Preventing Spread of Spill in Cuba to U.S. Waters

The United States needs to practice smarter diplomacy and lower its own bureaucratic barriers if it wants to help prevent or respond to a spill in Cuban waters that could spread into U.S. territory, oil specialists told a Senate committee Oct....

Science Policy

Lawmakers Question Quality, Integrity Of Scientific Work by Federal Agencies

Sen. David Vitter (R-La.) and other Republican lawmakers accused the Obama administration of "scientific misconduct" in an Oct. 18 letter that questioned the integrity and quality of scientific work being conducted by several...

Water Pollution

EPA Proposing Rule to Require Animal Feeding Operations to Provide Data

The Environmental Protection Agency released a proposed rule Oct. 18 that would require animal feeding operations to submit a range of data to regulators, including information on the number and type of animals on site and the number of acres...

CORRECTION

An article in the Oct. 18 report incorrectly cited the number of states filing an amicus brief in support of a petition to the U.S. Supreme Court in a case involving stormwater runoff from logging. Twenty-six states signed the amicus brief. The...

BNA INSIGHTS

The Business of Water: It Is Time to Embrace a New Model for Water Services

Almost 40 years after enactment of the Clean Water Act, there is a pressing need to expand the focus of water policy beyond the narrow regulatory issues associated with that law. The same applies to matters traditionally associated with the...



Inside EPA's Environmental Policy Alert, 10/19/11

<http://insideepa.com/Environmental-Policy-Alert/Environmental-Policy-Alert-10/19/2011/menu-id-132.html>

As Senate Weighs Waiver, EPA Vows To Delay Pesticide Permit's Enforcement

EPA officials are vowing to delay enforcement of their upcoming Clean Water Act (CWA) permit for pesticide spraying operations until next January, weeks after the Oct. 31 court-ordered deadline, to give operators additional time to comply.

Industry Urges EPA To Clarify Financial Assurance Guide For CCS Wells

ATLANTA -- Industry and some state officials are seeking additional clarity from EPA on how owners and operators of carbon capture and sequestration (CCS) wells can demonstrate adequate financial resources to remediate groundwater contamination, including how to estimate remediation costs to represent an accurate picture to investors.

EPA-State Project Aims To Tackle Problems, Costs Of Implementing Rules

EPA is committing to work with states on a pilot project aimed at cutting costs and improving implementation for agency rules that states have delegated authority to oversee, though one state source says that officials have yet to resolve key aspects of the nascent effort including which rules will serve as the focus of the pilot project.

Funding Cuts, More Rules Spur States To Eye New Regulatory Approaches

INDIANAPOLIS -- State officials say Virginia's efforts to "flatten" and accelerate water permitting is a prime example of changes states will have to make in implementing environmental regulations in order to ensure their ability to continue adequately overseeing a growing number of delegated EPA rules at a time of shrinking budgets.



MINING:

Narrow thumbs-down election result could undermine Pebble project

Manuel Quinones and Gabriel Nelson, E&E reporters Published: Tuesday, October 18, 2011

A tight vote in a local ballot initiative is threatening to derail southwestern Alaska's massive Pebble gold and copper mining project.

Unofficial results released last night by the Lake and Peninsula Borough show the "Save Our Salmon Initiative" aimed at stopping the mine project prevailing by 34 votes, 280-246.

The measure -- which calls for banning permits for mines that would have "a significant adverse impact" on salmon streams and rivers -- is another front in the fight over a mine that Pebble foes say could destroy a valuable wild salmon fishery in Bristol Bay.

"It's very easy to kill an initiative, it's very hard to pass one. So I consider it a victory and a victory of the people of the Lake and Peninsula Borough that it passed," Art Hackney, spokesman for the group Alaskans for Bristol Bay, told a local television station.

On the other side, the Pebble Limited Partnership -- Anglo American PLC and Northern Dynasty Minerals Ltd. -- highlighted that the vote was close.

"We are appreciative of the many voters from the Lake and Peninsula Borough who dedicated time to understand the true risks presented by this ill-concieved ordinance and the very real impacts it could have regionally," the company said in a statement.

But the Lake and Peninsula Borough, a 140-mile strip the size of West Virginia, does not include Dillingham and Naknek, the region's two population centers. Though they are each about 100 miles from the Pebble deposit, the fishing towns have become hotbeds of resistance to the project because of concerns that mining could harm the spawning streams for the salmon that commercial fishermen catch in Bristol Bay.

Opponents claim that almost 80 percent of the Bristol Bay region is against the Pebble project. "The fact that [the election] was close does not reflect the widespread opposition," Tony Turrini, senior counsel for the National Wildlife Federation in Alaska, said in an interview.

And the last poll by the Bristol Bay Native Corp., conducted in 2007, found that 70 percent of shareholders do not want the mine, even though the holding company doesn't have any commercial fishing assets. A new poll is in the works, said Jason Metrokin, the president and CEO of BBNC, during a recent interview.

The Pebble Partnership, with state support, was hoping to stop the vote from even taking place. superior court Judge John Suddock refused to block the election but has also not ruled on the underlying issues, including whether a borough ban can even be enforced.

"The state of Alaska has stated that this ordinance is unenforceable as a matter of law and will not withstand the legal challenge that continues in Alaska's superior court next month," the company said. "We agree and will continue our legal challenge for the reasons we

have stated throughout this process. Our view remains that this change in the borough code is not legal."

But Turrini said the measure has a "reasonably good chance" of standing up in court. "There are some very good attorneys that have looked at this very closely and believe this is a valid initiative," he said.

Heavy spending on election

Even with a court battle looming, both sides spent significant amounts of money to influence the electorate. And they accuse each other of spreading misinformation.

Disclosure records show that wealthy Anchorage businessman Robert Gillam has donated at least \$400,000 in support of the ballot measure and against the mine. A document filed earlier this month showed the Pebble Partnership had donated at least \$389,000 to the group Defend Your Rights.

The company is spending almost \$100 million this year on exploration and environmental studies on the site but has yet to submit any permit documents. Supporters say Pebble should at least be allowed to go through the normal vetting process.

Opponents are also citing the need for a science-based approach. For many of them, however, that means a U.S. EPA veto of the mine resulting from the agency's ongoing review of large scale development in the area.

"Let science decide," Nancy Blakey, CEO of Snopac Products Inc., said in an interview. "I don't think any of us are anti-development, but we really need to have science decide."

Blakey was on a lobbying swing through Washington, D.C., earlier this month -- her first time in the city -- hoping to inform lawmakers and bureaucrats about the business perspective on the Pebble project. Snopac is one of Alaska's few independently owned and family run seafood processing companies.

"It's my lifeblood, sockeye, it's my family's life," Blakey said. "Without clean water, there's no salmon. Without salmon, there's no Snopac."

While the seafood industry highlights the salmon-related economy, Pebble says the project is already bringing much-needed jobs to the area. The company says both can coexist.

Said Metrokin, "Not in this location."

OIL AND GAS: Pa. to decide whether Cabot has rectified Dimock pollution

Published: Tuesday, October 18, 2011

The quest for clean water in Dimock, Pa., may be reaching a critical point.

Cabot Oil & Gas Corp., whose drilling work in the area has been shuttered until it cleans up the methane gas that its drilling operations have caused to seep into Dimock's aquifer, said it has met the Oct. 17 deadline to restore and replace the town's water supply by providing treatment systems and massive containers known as water buffalos on affected properties.

But residents who have filed a lawsuit against the natural gas company disagree. They say their water is still unusable due to contamination from methane and toxic chemicals commonly associated with hydraulic fracturing, a process Cabot and other drillers use to extract gas from shale formations.

"I want to live in this home, but I have to have drinking water," said Victoria Switzer, whose water was found to be contaminated with toluene and ethylene glycol. "I have to have water that doesn't freak me out with wondering what's in it today."

Cabot said Switzer's water had been contaminated by a nearby auto repair shop, not by the company's operations. Switzer said she does not believe Cabot.

The Pennsylvania Department of Environmental Protection will make the final determination whether Cabot has fulfilled its obligations to Dimock, a town made famous by the Oscar-nominated documentary "Gasland," which showed the effect of natural gas drilling on nearby residents.

If DEP finds Cabot's work is complete, the company will be permitted to resume drilling in the town and will stop paying for water deliveries to residents.

DEP spokeswoman Katherine Gresh said the department does not have a deadline for its decision.

"DEP will continue to require Cabot to do this work until we are satisfied that the methane migration problem has ceased, regardless of how long it takes," she said via email.

Cabot has been drilling in Dimock since late 2008 after homeowners in the area leased their land to the company. On Jan. 1, 2009, a residential water well exploded, leading to a DEP investigation that revealed methane had migrated from Cabot's wells into the water supply. Cabot denied the findings, saying the methane in the residents' wells was naturally occurring (Michael Rubinkam, *Fuel Fix*, Oct. 17). -- **PK**

WATER POLLUTION:

Supreme Court is urged to review ruling on EPA's logging-road permits

Lawrence Hurley, E&E reporter Published: Tuesday, October 18, 2011

Timber industry groups and 26 states have filed briefs urging the Supreme Court to review a controversial ruling that requires Clean Water Act permitting for stormwater runoff on logging roads.

The San Francisco-based 9th U.S. Circuit Court of Appeals' 2010 ruling has provoked a political backlash both in Congress and in the affected states (*Greenwire* , July 27).

The industry and states' amicus briefs were filed in support of the petitions in *Decker v. Northwest Environmental Defense Center* and *Georgia-Pacific West Inc. v. Northwest Environmental Defense Center* , in which the state of Oregon and the timber industry respectively are seeking review of the 9th Circuit ruling.

The justices will not decide until later in the year whether to take up the case.

The 9th Circuit ruled that logging road operators, including timber companies and local government entities, should be required to apply to U.S. EPA for permits under the National Pollutant Discharge Elimination System (NPDES).

The decision applies to the nine Western states within the court's jurisdiction, including the Pacific Northwest, which has a significant logging industry.

In the brief filed by the states -- which include Alaska, Idaho, Montana and Washington state -- Arkansas Attorney General Dustin McDaniel (D) wrote that the 9th Circuit had effectively invalidated U.S. EPA's "silviculture rule" that allowed states to regulate runoff from forest roads.

"With this interpretation of the Clean Water Act, the 9th Circuit ... has forced upon the states yet another burdensome, unnecessary federal regulation," McDaniel said in a statement.

The second brief was filed by the National Alliance of Forest Owners (NAFO), which was joined by a lengthy list of other industry groups.

"With the stroke of a pen, the court has re-written one of the EPA's best Clean Water Act success stories," NAFO President David Tenny said in a statement.

[Click here](#) to read the states' brief.

[Click here](#) to read the industry brief.

EPA:

Boxer lashes out at House efforts to roll back regs

Manuel Quinones, E&E reporter Published: Tuesday, October 18, 2011

Senate Environment and Public Works Chairwoman Barbara Boxer (D-Calif.) briefed lawmakers today on House measures aimed at rolling back the Obama administration's environmental regulatory efforts.

During the Senate's weekly policy lunches, Boxer touted a report she released this month supporting the Clean Air Act, the Clean Water Act and other environmental laws. The document highlights the laws' benefits and positive economic impact.

Senate Majority Whip Dick Durbin (D-Ill.) carried the report with him as he walked out of the lunch meeting. "I think it would be disastrous to turn our back on air and water [protections] in an effort to create jobs," he said in an interview.

With the House passing numerous bills taking particular aim at U.S. EPA, policymakers and interest group leaders are looking to the Senate for any indication on how it may proceed. The Senate, controlled by Democrats, has been skeptical of legislation aimed at reining in the administration.

"We have resisted those efforts," Sen. Ben Cardin (D-Md.) said in an interview.

However, Republicans and industry leaders hope moderate Senate Democrats, coal boosters and those facing tough re-election battles lobby for consideration of at least some of the House bills.

"I don't know the lineup yet or the likelihood of passage," said Sen. Bob Casey (D-Pa.) when asked if legislation to limit EPA oversight of coal ash would receive Senate consideration. "It's too early to assess it."

ClimateWire -- Wed., October 19, 2011 -- [Read the full edition](#)

1. POLITICS: Perry targets incentive that pushed Texas to the top in wind power

Texas Gov. Rick Perry previously supported the extension of federal incentives for wind power before signaling last week that he would let them expire if elected president. The production tax credit is widely seen as a key driver of the Texas wind boom. It lowers the cost of producing wind power by 2.2 cents per kilowatt-hour, providing a financial edge that has helped developers compete with low-priced electricity derived from coal and natural gas.

2. POPULATION: As Earth nears 7B, experts see biggest impact on cities

NEW YORK -- What would the world look like with 7 billion human beings in the mix, vying for resources? Pretty much what it looks like now. That's because the planet is about to pass the 7 billion mark any day now. Or maybe it already has, according to academics at Columbia University.

TODAY'S STORIES

- 3. SCIENCE: Unusually powerful dust storm darkens Lubbock, Texas**
- 4. FLOODING: Flood damage for 2011 could top \$2B; national plan needed, experts say**
- 5. NUCLEAR: Will New York's lights stay on without Indian Point's reactors? A puzzle for politicians**
- 6. WATER: Biennial report on fresh water argues for more cooperation on water issues**
- 7. ADAPTATION: Some developing nations help farmers prepare for climate shifts**
- 8. MARKETS: Low-carbon products stymied in U.S. by lack of long-term policy**
- 9. BUSINESS: Industry group announces top 100 clean companies**
- 10. OCEANS: Red tide blooms off Texas coast**
- 11. SECURITY: Resource scarcity due to climate change presents major health risks**
- 12. MINING: Chinese rare earth company suspends mining operations for a month**
- 13. FLOODS: Death toll expected to increase as heavy rain hits Central America**

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